IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 3513 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BHUPAT RAMJI VASAVA

Versus

STATE OF GUJARAT

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Appearance:
MR JOY MATHEW for Petitioners
Mr.D.P. Joshi, AGP, for Respondent Nos. 1 & 2
MS SEJAL K MANDAVIA for Respondent No. 3 and 4
Mr.B.H. Chhatrapati, for
SINGHI & BUCH ASSO. for Respondent No. 5

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CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE P.B.MAJMUDAR

Date of decision: 22/06/2000

ORAL JUDGEMENT: (Per B.C. Patel, J.)

1. Rule. Respective Advocates waive service of process.

2. Petitioners, who are residents of Amaletha village, situated in Taluka Nandod, Narmada District, have approached this Court by filing a petition under Article

226 of the Constitution of India, making a grievance that the Village Panchayat constituted under the Gujarat Panchayats Act, 1993 (hereinafter referred to as "The Panchayats Act") is not discharging its duties properly and, therefore, writ is required to be issued not only against the Panchayat, but against respondent No.5, who is taking advantage of the situation.

3. Few relevant facts are required to be narrated which are as under :-

Respondent No.5 is a Company, having its factory within the limits of Village Amaletha. Under the Panchayats Act, there is a provision for levy of taxes and fees by Village Panchayat. The relevant portion of Section 200 reads as under :-

> "200 (1) Subject to any general or special order (including an order fixing the minimum and maximum rates of a tax or fee) which the State Government may make in this behalf, it shall be competent to a village panchayat to levy all or any of the following taxes and fee at such rates as may be decided by it and in such manner and subject to such exemptions as may be prescribed, namely :-
>
> (i) a tax on buildings (whether subject to payment of agricultural assessment or not) and lands (which are not subject to payment of agricultural assessment) within the limits of the village;
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> (ii) octroi on animals or goods or both brought within the village for consumption, use or sale therein;
>
> ... ... ...
>
> (3) Rules made under sub-section (1) may, inter alia provide,-
>
> (a) for the assignment and payment of a part of the proceeds of pilgrim tax levied by village panchayat to a district panchayat or taluka panchayat to such extent and in such circumstances and on such conditions as may be prescribed;

(b) for lump sum payment of tax on vehicles or animals by persons liable to pay such tax.

(4) The tax on buildings or lands referred to in clauses (i) and (xxi) of sub-section (1) shall be leviable from the owners or occupiers thereof.

Provided that when an owner of a building or land has left the village or cannot otherwise be found, any person to whom such building or land has been transferred shall be liable for the tax leviable from the owner.

(5) The State Government may, by notification in the Official Gazette, direct that the tax upon buildings or lands referred to in clause (i) of sub-section (1) shall not be levied or shall be levied on such reduced scale on all buildings and lands or on any class of buildings or lands situated in an area predominantly populated by members of Scheduled Castes or Scheduled Tribes.

(6) Any person aggrieved by the assessment, levy or imposition of any tax or fee may appeal to the district panchayat within the prescribed period.

... ... ...."

Thus, the Panchayat has right to levy tax on buildings and lands. There is a provision for lump sum payment of tax on vehicles or animals. The State Government, under sub-section (5), can issue a notification in official gazette, directing that tax upon buildings or lands shall not be levied or shall be levied on such reduced scale on all buildings and lands or on any class of buildings or lands situated in an area predominantly populated by members of Scheduled Castes or Schedules Tribes.

Section 201 being relevant, we are reproducing the entire section :-

" 201. (1) Subject to any rules that may be made under this Act, and regard being had to the fact that a factory itself

> provides in the factory area all or any of the amenities which such panchayat provides, village any factory with the sanction of the State Government to receive a lump-sum contribution in lieu of all or any of the taxes levied by the panchayat.
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> (2) Where no such agreement as is referred to in sub-section (1) can be reached, the matter may be referred to the State Government in the manner prescribed and the State Government, may after giving to the panchayat and the factory concerned an opportunity of being heard decide the amount of such contribution. The decision of the State Government shall be binding on the panchayat and the factory concerned.
>
> (3) In the case of any matter referred to the State Government under sub-section (2), the State Government may, subject to such condition as it may think fit to impose having regard to the circumstances of the case, by order in writing direct the panchayat to stay the collection or recovery from the factory of all or any of the taxes until the State Government decides the matter under sub-section (2)."

Thus, when a lump-sum amount is agreed between the Panchayat and the tax payer, viz., the factory, then the sanction of the Government is a must for levying lump-sum tax. The Government has to take a decision after hearing the parties and the Government may impose conditions as it may think fit to impose having regard to the circumstances of the case by order in writing.

4. In the instant case, in the petition, figures are given with regard to the assets of the Company. We may not express any opinion about the correctness of figures, but, nonetheless, we will have to refer to letter dated 12.8.1992, addressed to respondent No.5, pointing out the assessment of the building and lands for the year 1992-'93. It is required to be noted that the respondent No.5 did not cooperate with the Panchayat to assess the value of the building and lands. The properties were constructed in the year 1992-'93 and the letter, bearing No.JP/524/693 to 695 dated 26.5.1992, was taken into consideration for the purpose of assessment. Despite the

opportunities given to respondent No.5, respondent No.5 did not supply the copies of construction documents. Therefore, the assessment of the properties was made in the presence of the Panchas, five in number. In view of the value arrived at, the same was placed before the Panchayat and it appears that, a Resolution was passed and for 18 different items, value as well as the tax were assessed. Respondent No.5 was called upon to make the payment of tax within a period of 30 days. It seems that nothing was done in the matter. Again, vide Annexure `C', dated 19.1.1993, respondent No.5 was informed. The Panchayat very politely stated that if respondent No.5 has any objection or suggestion, the same should be forwarded to the District Panchayat, through the Taluka Panchayat, Nandod {vide, Annexure `D'}. Again, there was assessment and the Panchayat reminded respondent No.5 of its duty to pay the tax. On 17.4.1997, vide Annexure `E', again, there was demand. It was also pointed out that the original documents have not been produced. Management has not given any cooperation and as there was no alternative, the Panchayat called upon respondent No.5 to pay the building tax and the tax on land and on other items mentioned in the notice.

5. Before us, on behalf of respondent No.5, it is stated that the Panchayat passed a Resolution, and it was decided that the amount should be levied as per the Resolution. Xerox copy of a certified copy is placed on record. Reading the same, it appears that on 15.2.1993, general meeting of the Panchayat was held. A decision was taken to the effect that the respondent No.5-Company has provided the staff quarters, the value of which is assessed at Rs.70,000/-. It was decided that as a token tax, a sum of Rs.5,000/- per year should be levied for a period of five years. Mr.Chhatrapati drew our attention to a Resolution passed by the Gram Panchayat on 13.7.1997. In the general meeting of the Panchayat, it was decided to levy yearly tax at the rate of Rs.10,000/only. In the Resolution, it is mentioned that in this backward area, except respondent No.5, there is no one providing employment. It is also mentioned that in view of employment provided by the Company, there is much improvement in the situation and economically, people have gained. Keeping this aspect in mind, the tax which was fixed at the rate of Rs.5,000/- has been increased to Rs.10,000/- after considering the objection raised by the Company. This Resolution was passed unanimously.

6. Even reading this Resolution, it becomes clear that this refers to the staff quarters. It does not

refer to the factory premises. Not a single Resolution is pointed out to us, indicating that the amount of Rs.5,000/- or Rs.10,000/- refers to the building of the factory or the lands. It is required to be noted that there is nothing to indicate that the assessment made by the Village Panchayat was questioned before the appropriate authority by respondent No.5 at any point of time. Mr.Chhatrapati drew our attention to a Resolution passed by the Gram Panchayat on 15.2.1993. The members of the Panchayat considering the fact that the Company is providing opportunities for employment and has solved the question of unemployment, fixed yearly tax at the rate of Rs.5,000/-. In the Resolution, in Gujarati "Varshik Mudi Rupee Kimat Par Rs.5,000/-" is mentioned. It refers that its annual letting value has been suggested by these words. Mr.Chhatarapati submitted that the Panchayat accepted in its Resolution that yearly tax should not exceed Rs.5,000/- so far as the property of the Company is concerned. In view of this, according to Mr.Chhatrapati, the Company has to pay tax of Rs.10,000/-, and not more, in any case. He submitted that the Company has not challenged the assessment orders referred to in the letters at Annexures `C', `D' and `E'. It may be noted that so far as the staff quarters are concerned, the Resolution was passed to levy total tax of Rs.5,000/- (which was increased to Rs.10,000/-, subsequently).

7. It is surprising that in this matter, on behalf of the State, without the affidavit filed by the Company, the Under Secretary, Panchayats, Rural Housing and Rural Development Department, has filed an affidavit, justifying the action of the respondent No.5, stating that there is no assessment and no suit is maintainable against the Company. Is he trying to defend the Company by this affidavit? It appears that he has not gone through the entire petition. We have indicated three letters addressed to the Company, pointing out the assessment. When the Under Secretary filed the aforesaid affidavit before us, there was no affidavit filed by the Company with the Annexures, including the Resolutions. Therefore, there was no occasion for him to peruse the affidavit of the Company. Even in his affidavit, he has not stated that he called for the records from the Panchayat and after referring the record he is filing the affidavit. The proposed assessment is found at Annexure `B' letter dated 12.8.1992, wherein objections were invited and the Company has filed no objection whatsoever. On what basis the deponent has stated that there is no legal assessment made by the Gram Panchayat. It is required to be noted that he was not an adversary

and he was not required to defend the cause, which is required to be defended by respondent No.5. On behalf of the State, it was his duty to point out whether there is an agreement or not under Section 201 of the Panchayats Act, or whether there is exemption as per sub-clause (5) of Section 200 of the Panchayats Act or not. Rightly or wrongly if the assessment is made by the Panchayat, it was for the Company, respondent No.5, to challenge before the appropriate authority, but it was certainly not open for the Under Secretary to plead on behalf of respondent No.5.

8. Repeal and Savings clause of Section 276 of the Panchayats Act is required to be reproduced, which reads as under :-

> "276. (1) In this section unless the context otherwise requires-
> ... ... ...
> (j) any appointment, notification, notice, tax, fee, order, scheme, licence, permission, rule, bye-law, regulation or form made, issued, imposed or granted in respect of the local area of an existing panchayat under the repealed Act and in force immediately before the appointed day, shall, in so far as it is not inconsistent with the provisions of this Act, continue to be in force as if made, issued, imposed or granted in respect of the corresponding local area of the successor panchayat under this Act until superseded or modified by any appointment, notification, notice, tax, fee, order, scheme, licence, permission, rule, bye-law, regulation or form made, issued, imposed or granted under this Act;
> ...."

Thus, the rules which were made under the Repealed Act continue to have the force until the rules are modified or new rules are framed and made applicable under the Gujarat Panchayats Act, 1993. So far as levy of tax is concerned, the Gujarat Gram and Nagar Panchayats Tax and Fees Rules, 1964 is required to be referred. So far as tax on buildings and lands is concerned, Part II of the aforesaid Rules is relevant. The rate of tax which a Panchayat may impose on buildings and lands shall be as

may be fixed by it either on the capital value or on the annual letting value of the building or the land, but not below the minimum and not exceeding the maximum rate specified in the Schedule annexed to the said Part II. Therefore, the Panchayat is entitled to levy the tax on buildings and lands in accordance with these Rules and the person liable to tax has to pay the tax. If the tax is sought to be levied in any manner contrary to the Rules, it is always open for the aggrieved party to challenge the same. So far as payment of lump sum contribution by factories in lieu of tax is concerned, the Government has framed Rules, which are known as "The Gujarat Panchayats (Payment of Lump-sum Contribution in lieu of Taxes) Rules, 1964". In case of agreement, these Rules are to be followed. Suffice it to say that in this case despite the fact that notice was issued by the Panchayat for fixing the annual letting value and thereafter, the notices were issued for making the payment after assessment, the same have not been challenged and the Company was satisfied because of the Resolution passed by all the members attending the meeting. The lump-sum contribution in lieu of taxes can be under the aforesaid Rules read with Section 201 of the Panchayat Act. It is not submitted before us by respondent No.5 that the lump-sum tax as per Resolution was sought to be levied in view of the provisions aforesaid.

9. It is required to be noted that the Company, having assistance of Law Officers, could have realized that the tax, which is required to be paid must be in accordance with law. If the Company was anxious to see that the tax is reduced, it could have approached the Government for the issuance of the Notification under sub-section (5) of Section 200 of the Panchayats Act or could have entered into an agreement with the Panchayat and with the sanction of the Government, could have seen that the Company is required to pay at a reduced rate, but, certainly by asking the Panchayat to pass a Resolution in favour of it, it cannot say that it has no responsibility to pay the tax. Even Resolution refers to staff quarters and not the factory building or the land.

10. It is required to be stated that the tax is to be levied in accordance with law. If the tax is levied as per the Rule, which we have referred to hereinabove, then it was the duty of the respondent No.5 to pay the tax. If the respondent No.5 was aggrieved by the assessment, rightly or wrongly made by the Panchayat, it was for respondent No.5 to approach the higher forum. We are not expressing our opinion as to the assessment amount and it

may not be understood that we are approving the value, as suggested in the bills issued to the Company. We are only indicating that the tax must be levied in accordance with law and if the benefit is sought, it can be in accordance with law and certainly not by Resolutions passed by a Panchayat. Under the Act, it was the duty of the Panchayat to levy tax. If any exemption was sought, the exemption should be as provided under the Panchayats Act and not in any other manner. Therefore, passing of a Resolution is of no consequence and cannot assist the respondent No.5. It is required to be noted that if two wrongdoers are agreeing to do a thing, which is illegal, the innocent should not be asked to suffer. They cannot act contrary to law and against the public interest. In the instant case, the beneficiaries would be the residents of the village. They are, really speaking, deprived of the tax amount. Panchayat, which is a body constituted under the Act, is expected to act in accordance with law and if the Panchayat is acting dehors the law, the Resolution passed by the Panchayat would not bind the others. The Apex Court, in case of Common Cause, a Registered Society v. Union of India and others, (1999) 6 SCC 667, has pointed in paragraph 39 as under :-

> "... 39. Under Article 226 of the Constitution, the High Court has been given the power and jurisdiction to issue appropriate writs in the nature of mandamus, certiorari, prohibition, quo warranto and habeas corpus for the enforcement of fundamental rights or for any other purpose. Thus, the High Court has jurisdiction not only to grant relief for the enforcement of fundamental rights but also for "any other purpose" which would include the enforcement of public duties by public bodies. So also, the Supreme Court under Article 32 has the jurisdiction to issue prerogative writs for the enforcement of fundamental rights guaranteed to a citizen under the Constitution .... "

The Public Bodies are required to be cautioned that they should act in accordance with law and they should see that because of their ignorance or otherwise, the benefit, which is otherwise likely to accrue to others, is not taken away. In the instant case, the Sarpanch has filed an affidavit, disclosing his ignorance about the provision of law. He has specifically stated in his

affidavit as under :-

> "... 4. I say and submit that now I will act as per the provisions of the Gujarat Panchayat Act, 1993. Actually, I did not know regarding the provisions of the Act, where concern person is not paying the taxes. Now, I am conversant of it, and I would try to recover taxes with penalty and if I am unable to recover, I will write letter to the Collector for the same. I will do the best attempt at my level ...."

If Sarpanch is ignorant about his duties, we think that the people of village may be deprived of their legitimate right on account of ignorance of the Sarpanch and others. We do not propose to say in this matter that the State Government should conduct classes to educate Sarpanch or the members of the elected Body. In the State of Gujarat, under the banner of Legal Aid, people are being trained. They are making people aware about their rights and we hope that the concerned authority would keep this in mind while educating the people.

11. In view of what we have stated hereinabove, we allow this petition and we direct the Panchayat, respondent No.4, to follow the procedure under the Panchayats Act and to take appropriate action for collecting the tax on buildings and lands, we repeat, "strictly in accordance with law". In a matter like this, the State ought to have intervened for the benefit of the people at large. In the instant case, it appears that on behalf of the State, affidavit has been filed not to remain as a mere spectator, but to assist respondent No.5. It was the duty of the State to advise respondent No.4-Gram Panchayat how to act and what action should be taken in the matter. The Chief Secretary may look into the matter whether it was necessary for the Secretary to file the affidavit, defending the Company without examining the record of the Panchayat and relevant provision of law. We leave this with the hope that the Chief Secretary shall examine this aspect and will do the needful.

12. The petition is allowed. Rule is made absolute accordingly.

( B.C. Patel, J. )

( P.B. Majmudar, J. )

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(apj)